

### **REMARKS**

Claims 1-2, 4-5, 9-12, 16, 21-43, 48, 50-54, 56-57 and 62-69 are pending. Claims 3, 8, 17-20 and 46-47, 49 and 55 have been canceled without prejudice. Applicants expressly reserve the right to pursue the canceled subject matter in this application or subsequent applications that claim the benefit of this application. Claims 1, 5, 48, 54 and 57 (and claims depending therefrom) have been amended to recite that the cells are enriched without leucopheresis or culturing. Support for the amendment may be found, inter alia, in the specification on page 16, lines 25-27; page 17, lines 8-14; and page 19, lines 13-15. These amendments do not enter any new matter.

Applicants request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the prior Office Action.

### **DETAILED ACTION**

#### **Rejections under 35 U.S.C. § 103(a)**

Claims 1-4, 8, 10-12, 17, 19-21, 23-36, 40-43, 46-47, 49-57, and 62-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strauer et al. (2002, *Circulation* 106: 1913-1918) taken in view of Shake et al. (2002, *Annals of Thoracic Surgery* 73: 1919-1926), Ueno et al. (US Patent Application Publication 2002/0037278), Kocher et al. (2001, *Nature Medicine* 7: 430-436), and Itescu (US Patent Application Publication 2003/0199464). Applicants traverse in light of the amended claims.

Applicants disagree with the rejection, but nonetheless, solely to expedite prosecution, applicants have amended claims 1, 5, 48, 54 and 57 (and claims depending therefrom) to recite the mesenchymal stem cells and CD133+/CD34+ cells are enriched without leucopheresis or culturing. Such amendment does not introduce any new matter, because the instant application recites, as possible embodiments, methods comprising leucopheresis and culturing cells (see page 16, lines 25-27; page 17, lines 8-14; and page 19, lines 13-15). See MPEP 2173.05(i) (stating that “[i]f alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. . .”).

Strauer et al. alone or in combination with the cited secondary references do not teach or suggest each of the limitations of the present claims as amended and thus fail to render obvious the claimed subject matter. Reconsideration and withdrawal of this rejection under 35 U.S.C. § 103(a) are respectfully requested.


### **CONCLUSIONS**

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

Applicants believe no additional fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. CWRU-P01-046 from which the undersigned is authorized to draw.

Dated: February 26, 2009

Respectfully submitted,

By   
Ryan Murphey, Ph.D.  
Registration No.: 61,156  
ROPES & GRAY LLP  
One International Place  
Boston, Massachusetts 02110  
(617) 951-7000  
(617) 951-7050 (Fax)  
Attorneys/Agents For Applicant